

REMARKS

By this amendment claim 47 is amended and claims 53 through 63 are added as new claims.

The Specification Adequately Describes the Subject Matter Claimed in Claim 51.

The Office action rejects claim 51 as failing to comply with the written description requirement of 35 U.S.C. §112, alleging that the disclosure as originally filed does not teach the limitation requiring that “the arm of the L-shaped member has a length comparable to a diameter of the body of the retaining means such that”

The patent specification as originally filed teaches the subject limitation. A patent specification is “directed to one of ordinary skill in the art,” and “drawings alone may provide a ‘written description’ of an invention as required by §112.” Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d at 866 (1993). Figures 1 and 2 demonstrate that Applicant was in possession of a device wherein “the arm of the L-shaped member has a length comparable to a diameter of the body of the retaining means” at the time the application was filed. While the invention is not limited to this configuration, this configuration is “described” in by these Figures in compliance with 35 U.S.C. § 112. Applicant respectfully requests that this rejection be withdrawn.

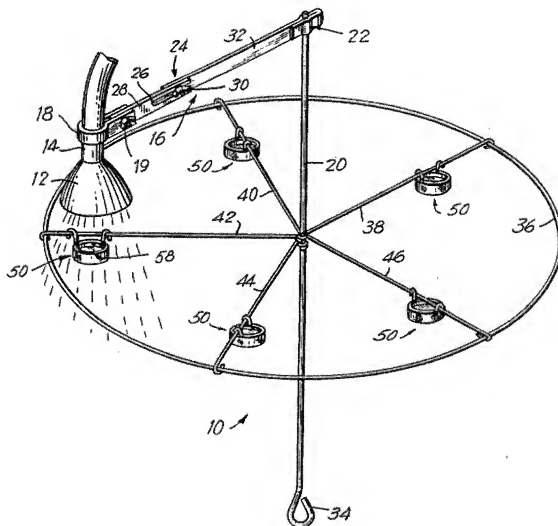
Claim 47 As Amended Removes Any Concerns About the Definiteness of Claims 47, 49, 51, and 52.

The Office Action rejects claims 47, 49, 51, and 52 under 35 U.S.C. §112 for failing to particularly point out and distinctly claim the subject matter of the claims. Claim 47 has been amended to specifically claim the combination of the soap dispenser and a water tap. Applicant respectfully requests that this rejection be withdrawn.

Miglozzi Does Not Make Claims 47, 48, 51, or 52 Obvious Under 35 U.S.C. § 103.

The Examiner has rejected claims 47, 48, 51, and 52 as being obvious in light of U.S. Patent No. 4,081,139 to Miglozzi ("Miglozzi").

Figure 1 from the Miglozzi patent is reproduced below.



In the Office Action response of May, 19, 2006, Applicant noted that Miglozzi does not disclose any embodiments that do not include a handle (34) on the central support shaft (20) for

rotating the central support shaft (20) relative to the mounting bracket (32) to move the spokes. If the shaft (20) was fixed relative to the mounting bracket (32) the handle (34) would be rendered inoperable because it could not turn the shaft. Similarly, if the support body (36) or spoke could pivot about the shaft (20), the handle would be ineffective because rotation of the handle would not result in effective movement of the support body (36) or spoke. Miglioizzi is therefore limited to embodiments where the shaft (20) moves relative to the mounting bracket (32) and the support body (36) does not move relative to the shaft (20).

The current Office Action asserts that making the shaft 20 integral with the bracket 16 and allowing the pivot to occur where spokes 38, 40, 42, 44, and 46 are attached to the shank is well within one of ordinary skill in the art. Even if this were true, it would not make any of claims 47, 48, 51, or 52 obvious under §103.

With regards to a rejection pursuant to 35 U.S.C. §103, the Examiner bears the initial burden in establishing a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103. In re Piasecki, 745 F.2d 1468, 223 USPQ 758 (Fed. Cir. 1985); In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness.

There is no basis for concluding that an invention would have been obvious solely because it is a combination of elements that were known in the art at the time of the invention. Fromson v Advance Offset Plate, Inc., 755 F.2d 1549, 1556 (Fed. Cir. 1985). Obviousness must be determined “from the perspective of one having ordinary skill in the art to which the subject matter pertains, having only the prior art references before him and unaided by the teachings of the patents in suit.” Twin Disc, Inc. v. United States, 10 Cl. Ct. 713, 731, (Cl. Ct. 1986). “[I]t is not permissible to first ascertain factually what the inventors did and then view the prior art in

such a manner as to select from the random facts of that art only those which may be modified and then utilized to reconstruct the claimed invention."

Rejecting these claims under §103 on the basis that "[m]aking the shank/shaft integral with bracket 16 and allowing the pivot to occur where pivotal members/spokes 38, 40, 42, 44, 46 are wrapped around the shank/shaft 20 is well within on[e] of ordinary skill in the art" is an improper application of hindsight. It does not prove that the claimed subject matter is obvious to show that a person of skill in the art could make the invention after viewing Applicant's disclosure. In fact, the only thing that this proves is that Applicant provided an enabling disclosure.

Miglioizzi does not teach or suggest the subject matter of the rejected claims. Miglioizzi does not disclose any embodiments that do not include a handle (34) on the central support shaft (20) for rotating the central support shaft (20) relative to the mounting bracket (32) to move the spokes. If the shaft (20) was fixed relative to the mounting bracket (32) the handle (34) would be rendered inoperable because it could not turn the shaft. Similarly, if the support body (36) or spoke could pivot about the shaft (20), the handle would be ineffective because rotation of the handle would not result in effective movement of the support body (36) or spoke. Miglioizzi is therefore limited to embodiments where the shaft (20) moves relative to the mounting bracket (32) and the support body (36) does not move relative to the shaft (20). Miglioizzi does not suggest embodiments where the shaft (20) does not move relative to the mounting bracket (32), and in fact teaches away from such an embodiment by including a handle (34) that would be inoperable if modified as the Office action suggests. If the Miglioizzi reference were modified as the rejection suggests, the handle (34) would be inoperable and useless, and a showing of obviousness also requires that the modification of the reference be suggested by the reference or in the art.

Claims 47 and 48 require an attachment means for attaching a body to a tap comprising an L-shaped member with an arm having an inner end and an outer end. The arm is provided with a clamp for engaging a tap and a shank integrally formed with the arm and extending downward from the arm. The lower end of the shank has a pivotal member that is pivotable relative to the shank and arm. This construction is neither disclosed nor made obvious by Migliozi, which requires a rotatable shaft (20) with a support body (36) fixedly mounted to the shaft (20) in all disclosed embodiments.

Migliozi fails to make obvious under §103 at least the L-shaped member having a shank integrally formed with an arm and a pivotal member being pivotable relative to the shank and arm required by amended claims 47 and 48. Applicants' respectfully request that this rejection be withdrawn and the claims allowed.

Migliozi and Bishop Do Not Make Obvious Claims 47 and 48 Under 35 U.S.C. § 103

The Office Action rejects claims 47 and 48 as unpatentable over Migliozi in view of U.S. Patent No. 855,428 to Bishop ("Bishop"). Applicants' incorporate herein the previous discussion regarding the deficiencies of the Migliozi reference as compared to claims 47 and 48. The combination of Migliozi and Bishop fail to disclose or make obvious at least the L-shaped member with a shank integrally formed with an arm and a pivotal member being pivotable relative to the shank and arm required by amended claims 47 and 48. Applicants' therefore request that this rejection also be withdrawn.

Claims 49 and 50 Are Allowable as Depending from Allowable Claims 47 and 48.

The Office Action rejects claims 49 and 50 as being unpatentable over Migliozi in view of U.S. Patent No. 2,647,797 to Moss ("Moss") and alternatively over Migliozi in view of

Bishop and Moss. Applicants' incorporate herein the previous discussion regarding the deficiencies of the Miglioizzi reference as compared to claims 47 and 48. Claims 49 and 50 depend from and include all of the limitations of claims 47 and 48 respectively. Neither Moss nor Bishop, alone or in combination, disclose or make obvious the elements of claims 47 and 48 not disclosed or made obvious by the Miglioizzi reference.

The New Claims are Supported by the Original Specification as Filed.

As noted above, drawings may be used to meet the written description requirement. The elements described in the new claims are generally described throughout the specification and/or in Figures 1, 2, and/or 3. Applicant would specifically like to note a few of the limitations of the new claims such as the annular lip member recited in claim 57 and the removable annular lip member recited in claim 63. The annular lip member is described in the specification as filed on page 3 at lines 6-10. The annular lip member is described as integral or removable and is also shown on Figures 1 and 2 as element 66.

Applicant respectfully submits that this case is now in condition for allowance.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

Dated: February 12, 2007

/Frank P. Piskolich/

Frank P. Piskolich

Registration No. 52,123

Customer No. 22859
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425 USA
Telephone: (612) 492-7000
Facsimile: (612) 492-7077